

MAJOR CHANGES FROM THE 2004 MCP PUBLIC HEARING DRAFT TO THE FINAL AMENDMENTS

This document presents the major changes made from the Fall 2004 public hearing draft to the final 2006 MCP amendments. For a summary of the public comments received on the full range of the 2004 proposals and how those comments were addressed in the final amendments, see “Summary of MassDEP’s Responses to Comments on the 2004 MCP Public Hearing Draft,” dated January 13, 2006.

○ Partitioning the 2004 proposal into 4 regulatory packages.

The Fall 2004 public hearing draft contained a broad range of proposals that included revised cleanup standards for chemicals for which standards currently exist, and proposed cleanup standards for chemicals with no current standard (e.g., perchlorate, RDX, NDMA and HMX). In addition to the numerical standard changes, the public hearing draft contained proposals for the notification and cleanup of Asbestos-in-Soil that involved revisions to the MCP, solid waste and air quality regulations. The balance of the public hearing draft included numerous proposals directed at improving public involvement and enhancing or clarifying the requirements for the assessment, risk characterization and remediation of disposal sites that were organized by sections of related proposals – Front End, Public Involvement, Subparts I & J and Miscellaneous, Numerical Standards.

Following the public comment period, MassDEP decided to partition the original proposal into 4 separate regulatory packages:

1. main body of the 2004 amendments, including *most* of the proposed amendments to the numerical standards;
2. perchlorate Maximum Contaminant Level for drinking water supplies (310 CMR 22), and MCP Reportable Concentration and groundwater cleanup standard;
3. revised and newly proposed numerical standards for a subset of chemicals; and
4. Asbestos-in-Soil proposals (encompassing MCP, solid waste and air quality regulations).

The partitioning was done to allow for the finalization of those proposals that were ready to go forward and additional development of and public comment on others. In this regard, the majority of the 2004 public hearing draft proposals, including most of the numerical standards, are soon to be published as final amendments. The other three regulatory packages are slated to go back out for public comment. The attached Table 1 presents the status and content of the 4 regulatory packages.

The remainder of this document summarizes the major changes made from the Fall 2004 public hearing draft to the final amendments with respect to the main body of the original package (i.e., package 1. above). These changes are listed under the subsection where these proposals appeared in the public hearing draft. The public hearing draft “Note to Reviewer” number is provided as a reference to the public hearing draft proposal.

○ **Changes to Front End proposals.**

- > Effective Date of Amendments (Front End/Note to Reviewer #1) - Based on public comment recommending a 60 to 90 day delay in the effective date of the amendments from the date of publication, a 3 month delay of the effective date from publication will be implemented (see 310 CMR 40.0005(5)). One exception to this effective date is the effective date for the electronic submittal of the Remedial Monitoring Report. The public hearing draft proposal required that Remedial Monitoring Reports be submitted using the electronic form established by MassDEP. No provision was made for submittal of a paper copy of the Remedial Monitoring Report. Based on comment received and MassDEP's interest in ensuring a smooth transition for Licensed Site Professionals and parties conducting cleanups who will be required to submit the electronic Remedial Monitoring Report, MassDEP has decided to delay the effective date of the required use of the electronic form for one year from the effective date of the other MCP amendments. Parties may voluntarily submit the Remedial Monitoring Report electronically during the year prior to its effective date. The provisions of 310 CMR 40.0027 implement the delayed effective date of the Remedial Monitoring Report.
- > Special Project Designation (Front End/Note to Reviewer #3) -In response to comment that the eligibility for Special Project Designation (SPD) Permits should be expanded, Eligible Tenant, as defined in 21E, was added to the parties who may apply for a SPD Permit. The provisions were also modified to allow transfer of the SPD permit, and an exception was created to allow MassDEP to consider applications above the municipal limit imposed by the regulation, if MassDEP receives such a request from the Chief Municipal Officer. Changes were also made to clarify the Special Project Permit review process (using the existing Tier I Permit process in 40.0720), and the permit effective date and duration.
- > Notification exemption for naturally-occurring arsenic in Worcester County and arsenic and beryllium in Boston Blue Clay (Front End/Note to Reviewer #8) – The exemption was expanded to apply to both groundwater and soil; the public hearing draft proposed the exemption for soil only.
- > Remedial Monitoring Report (Front End/Notes to Reviewers #15 - 17) – A number of changes were made to the requirements that implement the use of the Remedial Monitoring Report (RMR). The RMR standardizes the content and format of operational and monitoring information from remedial systems/programs. The changes from the public hearing draft to final amendments include:
 - A new definition for Remedial Monitoring Report has been drafted to be added to 40.0006 to provide additional clarity on the requirements;
 - modifications to the electronic transmittal form to prepare it and have it ready for the effective date of the regulations;
 - to ensure a smooth transition to the required electronic submittal, the effective date by which the RMR must be submitted electronically is one year from the effective date of the rest of the amendments; during the

transition year, parties have the option to submit the form electronically or as a paper copy;

- the RMR reporting periods have been simplified from the 4 proposed in the public hearing draft to 2 - monthly for systems addressing Imminent Hazards or Conditions of Substantial Release Migration and every 6 months for all other systems; and
- transition language was added to specify when, once the regulations go into effect, the first RMR is due; this language was added in the new section at 40.0027 related to the RMR effective date.

> Clarification of Status Report requirements for Comprehensive Response Actions

- To clarify the status report requirements for Comprehensive Response Actions, the provision 40.0874(3)(d)3. was deleted because other sections of the regulations specify the submittal frequencies for monitoring reports and 40.0874(3)(d)3. created conflicts with those provisions where the monitoring frequency is not every 6 months. A new provision at 40.0877 was added. It is intended to provide for the submittal of Status Reports in Phase IV on the initial operation and monitoring of the remedial system designed and constructed in Phase IV. Phase IV is written to allow for the initial operation and fine tuning of the remedy prior to the Phase IV Final Inspection Report and Phase IV Completion Statement. The regulations, however, do not currently provide for or require status reports for such start-up activities. The implementation of the Remedial Monitoring Report makes the absence of a Phase IV Status Report more of an issue. In addition to requiring such a report in cases where Active Operation and Maintenance is occurring during Phase IV, the new provisions provide that PRPs may optionally submit a Phase IV Status Report to document other Phase IV activities occurring before the Final Inspection Report and Completion Statement.

- > Providing the release location information on the Release Notification Form (Front End/Note to Reviewer #10) – The final amendment was simplified to require coordinates be reported as UTM's. MassDEP concluded that allowing reporting in three different formats (UTMs, longitude and latitude or Massachusetts state plan xy coordinates) as proposed in the public hearing draft presented too many data management difficulties. Comments were split as to which system is preferable. Since the MCP currently requires the use of UTM's at Tier Classification and coordinate conversion programs are readily available on the Internet, the decision was made to limit reporting of coordinates at the time of notification to UTM's.

- > Transition Language for new Class C RAO categories (Front End/Note to Reviewer #26) - Provisions were added to transition disposal sites with a Class C RAO status prior to the effective date of the regulations into the new Class C-1 and Class C-2 categories (see 40.1051(5)). The new provision makes all sites where a Class C RAO has been filed Class C-1 on the effective date of the regulations. Those sites will remain Class C-1 unless and until the party conducting response actions subsequently submits a Class C-2 RAO. Parties with a Class C-1 RAO are required to reevaluate the C-1 status in the 5 year Periodic Evaluation of the

Temporary Solution. Also, for clarity and ease of referencing, definitions of Substantial Hazard and No Substantial Hazard were added to 40.0006.

- **Changes to Public Involvement proposals.** The public hearing draft included a number of proposals to enhance existing MCP public involvement requirements and to add new requirements to provide notice to property owners, parties potentially affected by response actions and local officials in circumstances where such notice is not currently required. The body of proposed public involvement changes drew a significant volume of public comment. Many of the comments supported MassDEP's intention of improving the information available to the public, but argued that the proposed expansion would place too great a burden on parties conducting cleanups in terms of costs and delays in response actions. In preparing the final amendments, MassDEP sought to find a balance between the benefits and costs created by the public involvement proposals by selectively incorporating those proposals that provide the most direct improvements in information available to the public.
 - > Property Owner's right to obtain sampling results (Public Involvement/Note to Reviewers #4) - The public hearing draft proposal required that the property owner be notified of his/her right to obtain the sampling results upon request. The final regulation removes the request step to simplify the regulations and to remove the potential for willful blindness on the part of the property owner who fails to request the results. The provision will require that in every case where a property is sampled, the property owner will be sent the results.
 - > Providing local officials with a copy of the Release Notification Form (Public Involvement/Note to Reviewers #5) – The public hearing draft proposed a requirement to provide local officials with a reference to the local assessor's map and parcel numbers along with a copy of the Release Notification Form. This requirement was removed from the final amendments as public comment was received that found the proposal too burdensome, particularly for sudden releases and not warranted because in the vast majority of cases, the street address and coordinates which will be provided in the RNF will be sufficient for local officials to accurately identify the release location.
 - > Notification of Affected Individuals (Public Involvement/Note to Reviewers #6) – The final amendments include an added requirement that those Affected Individuals notified of an Immediate Response Action (IRA) to address an Imminent Hazard or Critical Exposure Pathway under this provision subsequently receive a copy of the IRA Completion Statement. Based on comment, the timeframe for notifying Affected Individuals was changed from 48 to 72 hours and suggested wording changes were made to clarify the provision.
 - > Notification of Owners of Properties that are within the Disposal Site (Public Involvement/Note to Reviewers #7) –The final amendments include an added requirement that any property owner notified under this provision at the conclusion of Phase II site investigation subsequently receive written notice with a copy of the Response Action Outcome conclusions.

- > Notification of Owners of Properties that about the Disposal Site (Public Involvement/Note to Reviewers #8) - This proposal is not included in the final amendments. MassDEP received a large number of comments in opposition to the proposal. In light of the other enhancements being made to the public notice and public involvement opportunities as part of these amendments, and the real and perceived difficulties with the proposal to notify abutters described by those who commented, MassDEP withdrew this provision.
- > Notification to Local Officials of a Release Abatement Measure Plan (Public Involvement/Note to Reviewer #12) – In the final amendments, the notice to local officials at 40.1403(d) prior to the implementation of a Release Abatement Measures was changed from the proposed “within 7 days prior” to the submittal of the RAM Plan to “within 20 days prior”. This change is in response to comments that a longer window would provide for weather-related and other delays that commonly occur, but would not be too far in advance. In addition, the text was unclear about whether these notices are written notices. A clause was added to make clear that these are written notices.
- > Tier II Classification public comment period (Public Involvement/Note to Reviewer #13) - The change to add a public comment period for Tier II Classifications proposed in the public hearing draft will not be made based on public comment received that these sites are less serious and complex than Tier I sites and do not warrant the additional process added by a public comment period at Tier Classification. A second proposed change at 310 CMR 40.1403(6) to provide a copy of the Phase I site map with the notice sent to local officials will be made.
- > Expansion of Public Involvement Opportunities for non-Public Involvement Plan disposal sites (Public Involvement/Note to Reviewer #14) - Based on public comment that the proposed expansion of public involvement opportunities under 40.1403(9) would unnecessarily delay response actions and that the additional public benefit would not justify these delays and added response action costs, MassDEP has modified the proposal so that the public involvement opportunities are not expanded beyond the current opportunities for comment provided for Immediate Response Actions and Release Abatement Measures. Some specific procedures (notice and comment periods) have been added for public involvement in these cases.

○ **Changes to Subparts I & J and Miscellaneous**

- > Notification of Imminent Hazards (Subparts I & J/Notes to Reviewers #1) - MassDEP received comment in support of both options presented in the public hearing draft for determining the relevant sample to consider when evaluating Imminent Hazards in surficial soil. Option 1 will be included in the final amendments, as it is easier to implement and based on the likelihood that the differences between the two co-located samples may be the result of random variability and thus, not represent a significant difference in risk.

- > Imminent Hazards Risk Characterization (Subparts I & J/Notes to Reviewers #8) – The public hearing draft proposed three changes for this section. The first proposal to give priority to MassDEP-derived toxicity values has been incorporated into the final amendments. The second proposal, to assign a noncancer Hazard Index of one to specific chemicals (cyanide, lead, and perchlorate) has been modified. MassDEP has replaced it with a narrative rule that applies the Hazard Index of one to “hazardous materials that have the potential to cause serious effects ... following short-term exposures, for example lead or cyanide.” The third proposal, to establish levels in a drinking water supply for cyanide, lead and perchlorate that represent an Imminent Hazard, has been dropped from this package of regulations.

- > Private Well Closure (Subparts I & J/Note to Reviewers #15) - The proposal to eliminate the Grant for private drinking water supply well closure was widely supported. Based on comment received and the added level of notice provided by the second option proposed in the public hearing draft, which requires a Notice of Activity and Use Limitation if the well will be retained as a non-potable water source, the proposed Option 2 is included in the final amendments.

- > Engineered Barriers (Subparts I & J/Note to Reviewers #17) - Much of the comment received on the proposal to add further restrictions on the use of Engineered Barriers argued that such limits were not justified for Engineered Barriers that met the required performance standards. In the final amendments, MassDEP did not impose additional limits on Engineered Barriers.

- > Pilot Test Definition (Subparts I & J/Note to Reviewers #22) – Based on comments received, the Pilot Test definition was modified to allow for the recovery of Nonaqueous Phase Liquid as part of the test and to lengthen the allowed duration of the test from 7 to 21 days.

- > Marginal Reference requirement for Activity and Use Limitations (Subparts I & J/Note to Reviewers #44) – An additional review of current registry practice conducted after the public hearing draft found that the recent conversion of the registries to electronic recordkeeping and tracking makes the use of the marginal reference not possible in some cases and unnecessary in light of the availability of electronic records that reference documents such as Notices or Grants to the property deed. MassDEP, therefore, is not implementing the proposed amendments to the marginal referencing requirements and further, is removing all existing MCP requirements for marginal referencing.

- > Audit Follow-up Plans (Subparts I & J/Note to Reviewers #47) – In the final amendments, a 21-day presumptive approval was added to the provision that provides for MassDEP’s approval of Audit Follow-up Plans. In addition, the Audit Follow-up Plan provision (4) has been moved out of 40.1140 and into 40.1160 and renumbered as (5). The provision was inserted into the incorrect section in the public hearing draft.

- > New Notary Language Added to all Activity and Use Limitation Forms -
Executive Order NO. 455 (April 2004) established new Standards of Conduct for Notaries Public and new language for notaries' signatures when witnessing documents. Since the Executive Order grandfathers existing regulations, MassDEP did not propose to change the notary language on the MCP Activity and Use Limitation forms in the public hearing draft. MassDEP received comments, however, that our AUL forms should be consistent with the Executive Order. In order to respond to these comments and avoid any confusion as to whether the forms meet the requirements of the Executive Order, MassDEP incorporated the new notary language in all of the MCP Activity and Use Limitation forms in the final amendments. MassDEP intends to continue to accept AULs that come in after the effective date of these amendments with the old notary language (i.e., MassDEP will not reject AULs on that basis or make it an enforcement issue). Through training/outreach, MassDEP will instruct LSPs and attorneys to use the forms with the new notary language.

- **Changes to Numerical Standards and Reportable Concentrations/Quantities**

- > Revisions to the Numerical Standards proposed in the public hearing draft -
Based on MassDEP's review of comments received on the proposed MCP Numerical Standards, a number of the standards will be resubmitted for public comment. Public comment will be sought in three separate public hearing draft proposals focusing on perchlorate, Method 1 standards that were significantly revised following the Fall 2004 Public Hearing Draft, and asbestos. For the purpose of identifying chemicals (in addition to perchlorate and asbestos) to resubmit for public comment, significant revisions were defined as standards that changed by a factor of 5 or more (up or down) from the Fall 2004 public hearing draft, and chemicals for which standard changes were not previously proposed in the Fall 2004 public hearing draft. See the attached Table 1 for a summary of the different regulatory packages.

Table 1 - Summary of the Regulatory Packages
Resulting from the Partitioning of the 2004 Public Hearing Draft Proposals

Regulatory Package	Status
1. Main Body of 2004 Proposals and <i>Most</i> of the Numerical Standards	<p>Final amendments have been given to the Secretary of State (SOS) for publication. The effective date of these regulations will be determined, in part, by the SOS schedule for publication in the Massachusetts Register, but will be no earlier than April 3, 2006.</p> <p>The numerical standards published by MassDEP in January, 2006 can now be used as part of a Method 2 risk characterization pursuant to 310 CMR 40.0982(7).</p>
2. Perchlorate Maximum Contaminant Level for drinking water supplies (310 CMR 22), and MCP Reportable Concentration and groundwater cleanup standard for disposal sites.	<p>Status: Public hearing draft has been submitted to EOEa for approval and public hearing are likely to be held in early 2006.</p>
3. Numerical Standards to be issued for public comment of proposed numerical standards for a subset of chemicals.	<p>Some comments received on the Fall 2004 package resulted in the recalculation of several standards that had not previously been proposed to change. In addition, several guidelines issued by MassDEP's Drinking Water Program changed since the Fall 2004 package was prepared (MassDEP tries to maintain regulatory consistency between the MCP GW-1 standards and the Drinking Water Program standards and guidelines).</p> <p>MassDEP has decided to reissue a public hearing draft with those standards that, as the result of recalculation, were not previously proposed to change or are changing by a factor of 5 or more, and those standards that are change as the result of a new Drinking Water guidelines. As part of the public hearing draft, MassDEP is also considering including a proposal that would allow for greater flexibility in characterizing the risk posed by petroleum releases within Zone IIs of public drinking water supplies. MassDEP is currently evaluating case studies and sampling data to determine whether such a proposal is warranted and should be incorporated into this regulatory package.</p> <p>The public hearing draft is expected to be available in the spring of 2006.</p>
4. Asbestos-in-Soil	<p>MassDEP has held several meetings with its external Workgroup on asbestos-in-soil to discuss and modify the regulatory proposals. MassDEP is about to implement a pilot project to "test-drive" the proposal and gather data before implementation. Updated regulations will be prepared upon completion of these efforts.</p>